

January 8, 2024

**SENATE BILL NO. 2535
(Second Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2535 (Second Reprint) with my recommendations for reconsideration.

This bill requires government healthcare plans and private sector health insurers in the State's regulated market to provide health benefits coverage for the purchase of medically necessary hearing aids and cochlear implants to covered persons aged 21 and younger. The bill permits insurers, including the State Health Benefits Commission, the School Employees' Health Benefits Commission, and NJ FamilyCare, to limit the benefit provided to \$2,500 per hearing aid for each hearing-impaired ear every 60 months.

While I support the laudable goal of increasing access to these devices, it appears that the bill, as presented, contradicts several provisions of State and federal law, resulting in the level of benefits required by the bill being less generous than what is currently required to be provided by health plans regulated by the Department of Banking and Insurance ("DOBI").

First, federal regulations implementing the Patient Protection and Affordable Care Act ("ACA") provide that a group health plan, or a health insurance issuer offering group or individual health insurance coverage, may not establish any annual limit on the dollar amount of essential health benefits for any individual, whether provided in-network or out-of-network. See 45 C.F.R.147.126. Additionally, P.L.2019, c.354 codified into State law federal essential health benefit requirements for State regulated health plans. In New Jersey, hearing aids are an essential health benefit and therefore cannot be subject to the monetary caps which this bill would impose in the DOBI-regulated market.

Second, guidance issued in 2023 by the Centers for Medicare and Medicaid Services ("CMS"), titled Final 2023 Notice of Benefit and Payment Parameters, states that age limits are presumptively

discriminatory if applied to essential health benefits when there is no clinical basis for the age limitation. The guidance released by CMS expressly references age limitations applicable to medically necessary hearing aids. Since current law requires health benefits coverage for hearing aids and cochlear implants only to covered persons aged 15 and younger, DOBI acted immediately to remove the age limitation from the Individual Health Coverage ("IHC") Program and the Small Employer Health Benefits ("SEH") Program standard policy forms to ensure compliance with CMS regulations. Consequently, plans operating in the IHC and SEH markets do not impose any age or dollar limits on medically necessary hearing aids and cochlear implants.

To eliminate federal preemption concerns and, more importantly, to ensure that the State's health care market provides access to high-quality, affordable health care to our residents in a manner consistent with the requirements of the ACA, I am recommending that this bill be amended to remove age and dollar limits on medically necessary hearing aids and cochlear implants in the DOBI-regulated market.

Therefore, I herewith return Senate Bill No. 2535 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Lines 17-18:</u>	Delete "21 years of age or younger"
<u>Page 2, Section 1, Line 30:</u>	Delete "\$2,500 per" and insert "one"
<u>Page 2, Section 1, Line 31:</u>	Delete "60" and insert "24"
<u>Page 3, Section 2, Lines 19-20:</u>	Delete "21 years of age or younger"
<u>Page 3, Section 2, Line 32:</u>	Delete "\$2,500 per" and insert "one"
<u>Page 3, Section 2, Line 33:</u>	Delete "60" and insert "24"
<u>Page 4, Section 3, Lines 17-18:</u>	Delete "21 years of age or younger"
<u>Page 4, Section 3, Line 30:</u>	Delete "\$2,500 per" and insert "one"
<u>Page 4, Section 3, Line 31:</u>	Delete "60" and insert "24"
<u>Page 5, Section 4, Lines 15-16:</u>	Delete "21 years of age or younger"

Page 5, Section 4, Line 27: Delete "\$2,500 per" and insert "one"

Page 5, Section 4, Line 28: Delete "60" and insert "24"

Page 6, Section 5, Lines 10-11: Delete "21 years of age or younger"

Page 6, Section 5, Line 22: Delete "\$2,500 per" and insert "one"

Page 6, Section 5, Line 23: Delete "60" and insert "24"

Page 7, Section 6, Lines 3-4: Delete "21 years of age or younger"

Page 7, Section 6, Line 15: Delete "\$2,500 per" and insert "one"

Page 7, Section 6, Line 16: Delete "60" and insert "24"

Page 7, Section 7, Line 44: Delete "21 years of age or younger"

Page 8, Section 7, Line 8: Delete "\$2,500 per" and insert "one"

Page 8, Section 7, Line 9: Delete "60" and insert "24"

Page 8, Section 8, Line 38: Delete "21 years of age or younger"

Page 9, Section 8, Lines 4-5: Delete "\$2,500 per" and insert "one"

Page 9, Section 8, Line 5: Delete "60" and insert "24"

Page 10, Section 10, Line 21: Delete "21 years of age or younger"

Page 10, Section 10, Line 35: Delete "\$2,500 per" and insert "one"

Page 10, Section 10, Line 36: Delete "60" and insert "24"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor